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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

Implementation of Sections 3(n)
and 332 of the Communications Act)

Regulatory Treatment of Mobile
Services)

GN Docket No. 93-252

To: The Commission

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REPLY COMMENTS OF NEXTEL COMMUNICATIONS, INC.

NEXTEL COMMUNICATIONS, INC.

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I. INTRODUCTION

Nextel Communications, Inc. ("Nextel"), pursuant to Section 1.415 of the Federal Communications Commission's ("Commission") Rules, hereby respectfully submits its Reply Comments in the above-captioned proceeding. Nextel filed Comments on the Commission's Second Further Notice Of Proposed Rule Making ("SNPRM")1/ on August 9, 1994, opposing the Commission's proposal to attribute management agreement interests for the purpose of applying the various spectrum caps recently imposed upon CMRS providers.

II. THE COMMENTS OVERWHELMING OPPOSE THE ATTRIBUTION OF MANAGEMENT AGREEMENTS FOR PURPOSES OF APPLYING SPECTRUM CAPS.

Of the nearly 20 parties filing comments in this proceeding, all but one agreed with Nextel that management agreements and other non-equity interests should not be attributable for spectrum cap purposes. They asserted, among other things, that attribution is inappropriate because it would hold parties accountable for

1/ FCC 94-191, released July 20, 1994.

spectrum which, by definition, they do not control.^{2/} In addition, the commenters pointed out that the result of attributing these interests would be to decrease the likelihood of designated entity participation in telecommunications. Attribution of management agreements would discourage their use in the Commercial Mobile Radio Service ("CMRS") industry, thereby eliminating a significant tool for designated entities which seek to participate in the wireless telecommunications industry.^{3/} These entities have historically been unable to raise the capital necessary to actively participate in wireless telecommunications; management agreements enable them to contract for the experience, knowledge and expertise necessary to operate telecommunications systems while retaining actual control.

Commenters also argue that attribution of management agreements is further unnecessary because there are other laws -- e.g., anti-trust laws and state corporate/fiduciary laws -- that protect against potential anti-competitive abuse of management relationships.^{4/} The Commission's own regulations protect against unauthorized ownership and control by a manager since they

^{2/} See Comments of Motorola, Inc. ("Motorola") at 5; and Comments of Rural Cellular Association at 5.

^{3/} See Comments of Southwestern Bell Corp. ("Southwestern Bell") at 2, 7; Comments of PlusCom, Inc. at 2-3; Comments of Motorola at 7; Comments of LCC, L.L.C. at 4; Comments of GTE Service Corporation at 6-7; and Comments of the American Mobile Telecommunications Association ("AMTA") at 6-7.

^{4/} See Comments of Southwestern Bell at 6; Comments of Motorola at 6; and Comments of GTE at 7.

require that the licensee retain control over the system.^{5/} Finally, several commenters stress that the attribution of these agreements for purposes of applying the spectrum caps will place a significant -- and unnecessary -- burden on the Commission as it would be required to review each and every agreement to determine whether spectrum is attributable to the managing party.^{6/}

**III. THE CONCERNS OF COLUMBIA PCS ARE NOT ADDRESSED
BY THE ATTRIBUTION OF NON-EQUITY INTERESTS.**

Columbia PCS (Columbia"), the lone party to support attribution, argues not only that the Commission should attribute non-equity interests -- particularly management agreements -- to the party who has contracted with the licensee, but also that only management agreements which permit sub-contracting of particular jobs (as opposed to more general overall management) should be permitted. Nextel opposes any change in the Commission's guidelines that would prohibit general management agreements wherein a party with the requisite experience and expertise is hired to operate several functions of the system -- planning, marketing and sales, for example. The mere fact that a manager may have the responsibility for more than one task is no reason to attribute that spectrum to the manager for spectrum cap purposes.

^{5/} See Intermountain Microwave, 24 Rad. Reg. 7 (P&F) 983; see also "Commission Public Notice on Guidelines Concerning the Operation of SMR Stations Under Management Agreements," released March 3, 1988.

^{6/} See Comments of Pacific Bell at 6; Comments of Cellular Telephone Industry Association at 4; and Comments of AMTA at 8.

Columbia's concern in this proceeding is that in the upcoming broadband personal communications services ("PCS") auctions, management agreements will permit designated entities to be used as fronts for larger, more experienced businesses which will actually control the operations of the designated entity. Columbia is not the first to raise concerns about sham transactions, and the Commission has addressed this issue in the PCS and competitive bidding proceedings.^{7/} In any case, the potential use of management agreements in PCS auctions should have no impact on the question of whether SMR management agreements should be attributable for CMRS spectrum cap purposes.

III. CONCLUSION

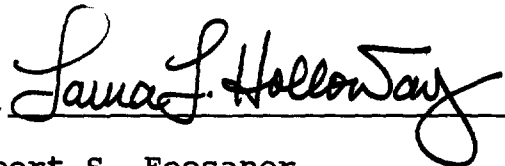
Management agreements are contracts between a licensee and a third party which, by definition, transfer no overall control or ownership to the third party. Rather, the third party acts as the manager of the system wherein it runs the day-to-day technical and mechanical operations. Such a position confers no ownership or control such that the manager should be attributed the spectrum on which that system has been licensed. Only the licensee of the system (and any other party which may have an attributable ownership interest therein) has control and ownership thereof, and

^{7/} See, e.g., Second Report and Order, PP Docket No. 93-253, at pp. 102-105.

only that licensee should be attributed that spectrum for purposes of the Commission's spectrum caps.

Respectfully submitted,

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August 19, 1994

CERTIFICATE OF SERVICE

I, Rochelle L. Pearson, hereby certify that on this 19th day of August 1994, I caused a copy of the attached Reply Comments to be served by hand delivery or first-class mail, postage prepaid to the following:

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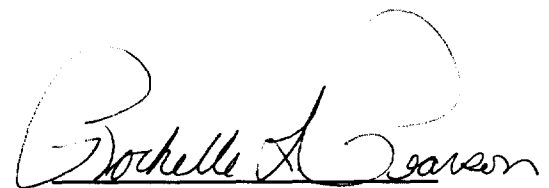
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